

Bureau of Export Administration, Commerce

§ 756.2

1979 (50 U.S.C. App. 2401 *et seq.*) and, in addition, before any petroleum subject to this section may be exported under the limitations and licensing requirement and penalty and enforcement provisions of the Export Administration Act of 1979, the President must make and publish an express finding that such exports will not diminish the total quality or quantity of petroleum available to the United States and that such exports are in the national interest and are in accord with the Export Administration Act of 1979.

OUTER CONTINENTAL SHELF LANDS ACT

43 U.S.C. 1354

(a) Application of Export Administration provisions.

Except as provided in subsection (d) of this section, any oil or gas produced from the outer Continental Shelf shall be subject to the requirements and provisions of the Export Administration Act of 1969. Note that the Export Administration Act of 1969, referred to in paragraphs (a) and (b) of the Supplement, terminated on September 30, 1979, pursuant to the terms of that Act.

(b) Condition precedent to exportation; express finding by President of no increase in reliance on imported oil or gas.

Before any oil or gas subject to this section may be exported under the requirements and provisions of the Export Administration Act of 1969, the President shall make and publish an express finding that such exports will not increase reliance on imported oil or gas, are in the national interest, and are in accord with the provisions of the Export Administration Act of 1969.

(c) Report of findings by President to Congress; joint resolution of disagreement with findings of President.

The President shall submit reports to Congress containing findings made under this section, and after the date of receipt of such reports Congress shall have a period of sixty calendar days, thirty days of which Congress must have been in session, to consider whether export under the terms of this section are in the national interest. If the Congress within such time period passes a concurrent resolution of disapproval stating disagreement with the President's finding concerning the national interest, further exports made pursuant to such Presidential findings shall cease.

(d) Exchange or temporary exportation of oil and gas for convenience or efficiency of transportation.

The provisions of this section shall not apply to any oil or gas which is either exchanged in similar quantity for convenience or increase efficiency of transportation with persons or the government of a foreign state, or which is temporarily exported for convenience or increased efficiency of transportation across parts of an adjacent foreign

state and reenters the United States, or which is exchanged or exported pursuant to an existing international agreement.

PART 756—APPEALS

Sec.

756.1 Introduction.

756.2 Appeal from an administrative action.

AUTHORITY: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; E.O. 12924, 59 FR 43437, 3 CFR, 1994 Comp., p. 917; Notice of August 10, 1999, 64 FR 44101 (August 13, 1999).

SOURCE: 61 FR 12851, Mar. 25, 1996, unless otherwise noted.

§ 756.1 Introduction.

(a) *Scope.* This part 756 describes the procedures applicable to appeals from administrative actions taken under the Export Administration Act (EAA) or the Export Administration Regulations (EAR). (In this part, references to the EAR are references to 15 CFR chapter VII, subchapter C). Any person directly and adversely affected by an administrative action taken by the Bureau of Export Administration (BXA) may appeal to the Under Secretary for reconsideration of that administrative action. The following types of administrative actions are not subject to the appeals procedures described in this part 756:

(1) Issuance, amendment, revocation, or appeal of a regulation. (These requests may be submitted to BXA at any time.)

(2) Denial or probation orders, civil penalties, sanctions, or other actions under parts 764 and 766 of the EAR, except that, an appeal from an action taken under § 766.25 shall be subject to the appeals procedures described in this part 756.

(b) *Definitions.* [Reserved]

[61 FR 12851, Mar. 25, 1996, as amended at 62 FR 25467, May 9, 1997; 65 FR 14863, Mar. 20, 2000]

§ 756.2 Appeal from an administrative action.

(a) *Review and appeal officials.* The Under Secretary may delegate to the Deputy Under Secretary for Export Administration or to another BXA official the authority to review and decide the appeal. In addition, the Under Secretary may designate any BXA official

to be an appeals coordinator to assist in the review and processing of an appeal under this part. The responsibilities of an appeals coordinator may include presiding over informal hearings.

(b) *Appeal procedures*—(1) *Filing*. An appeal under this part must be received by the Under Secretary for Export Administration, Bureau of Export Administration, U.S. Department of Commerce, Room 3898, 14th Street and Pennsylvania Avenue, N.W., Washington, DC 20230, not later than 45 days after the date appearing on the written notice of administrative action.

(2) *Content of appeal*. The appeal must include a full written statement in support of appellant's position. The appeal must include a precise statement of why the appellant believes the administrative action has a direct and adverse effect and should be reversed or modified. The Under Secretary may request additional information that would be helpful in resolving the appeal, and may accept additional submissions. The Under Secretary will not ordinarily accept any submission filed more than 30 days after the filing of the appeal or of any requested submission.

(3) *Request for informal hearing*. In addition to the written statement submitted in support of an appeal, an appellant may request, in writing, at the time an appeal is filed, an opportunity for an informal hearing. The Under Secretary may grant or deny a request for an informal hearing. Any hearings will be held in the District of Columbia unless the Under Secretary determines, based upon good cause shown, that another location would be better.

(4) *Informal hearing procedures*—(i) *Presentations*. The Under Secretary shall provide an opportunity for the appellant to make an oral presentation based on the materials previously submitted by the appellant or made available by the Department in connection with the administrative action. The Under Secretary may require that any facts in controversy be covered by an affidavit or testimony given under oath or affirmation.

(ii) *Evidence*. The rules of evidence prevailing in courts of law do not apply, and all evidentiary material deemed by the Under Secretary to be

relevant and material to the proceeding, and not unduly repetitious, will be received and considered.

(iii) *Procedural questions*. The Under Secretary has the authority to limit the number of people attending the hearing, to impose any time or other limitations deemed reasonable, and to determine all procedural questions.

(iv) *Transcript*. A transcript of an informal hearing shall not be made, unless the Under Secretary determines that the national interest or other good cause warrants it, or the appellant requests a transcript. If the appellant requests a transcript, the appellant will be responsible for paying all expenses related to production of the transcript.

(v) *Report*. When the Under Secretary designates another BXA official to conduct an informal hearing, that official will submit a written report containing a summary of the hearing and recommended action to the Under Secretary.

(c) *Decisions*—(1) *Determination of appeals*. In addition to the documents specifically submitted in connection with the appeal, the Under Secretary shall consider any recommendations, reports, or relevant documents available to BXA in determining the appeal, but shall not be bound by any such recommendation, nor prevented from considering any other information, or consulting with any other person or groups, in making a determination. The Under Secretary may adopt any other procedures deemed necessary and reasonable for considering an appeal. The Under Secretary shall decide an appeal within a reasonable time after receipt of the appeal. The decision shall be issued to the appellant in writing and contain a statement of the reasons for the action.

(2) *Effect of the determination*. The decision of the Under Secretary shall be final.

(d) *Effect of appeal*. Acceptance and consideration of an appeal shall not affect any administrative action, pending or in effect, unless the Under Secretary, upon request by the appellant

and with opportunity for response, grants a stay.

[61 FR 12851, Mar. 25, 1996, as amended at 62 FR 25467, May 9, 1997; 65 FR 14860, Mar. 20, 2000]

PART 758—EXPORT CLEARANCE REQUIREMENTS

Sec.

758.1 The Shipper's Export Declaration (SED) or Automated Export System (AES) record.

758.2 Automated Export System (AES).

758.3 Responsibilities of parties to the transaction.

758.4 Use of export license.

758.5 Conformity of documents and unloading of items.

758.6 Destination control statement.

758.7 Authority of the Office of Export Enforcement, the Bureau of Export Administration, Customs offices and Postmasters in clearing shipments.

758.8 Return or unloading of cargo at direction of BXA, the Office of Export Enforcement or Customs Service.

758.9 Other applicable laws and regulations.

AUTHORITY: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; E.O. 12924, 59 FR 43437, 3 CFR, 1994 Comp., p. 917; Notice of August 10, 1999, 64 FR 44101, 3 CFR, 1999 Comp., p. 302.

SOURCE: 61 FR 12852, Mar. 25, 1996, unless otherwise noted.

§ 758.1 The Shipper's Export Declaration (SED) or Automated Export System (AES) record.

(a) *The Shipper's Export Declaration (SED) or Automated Export System (AES) record.* The SED (Form 7525-V, Form 7525-V-Alt, or Automated Export System record) is used by the Bureau of Census to collect trade statistics and by the Bureau of Export Administration for export control purposes. The SED or AES record collects basic information such as the names and addresses of the parties to a transaction; the Export Control Classification Number (ECCN) (when required), the Schedule B number or Harmonized Tariff Schedule number, the description, quantity and value of the items exported; and the license authority for the export. The SED or the AES electronic equivalent is a statement to the United States Government that the transaction occurred as described.

(b) *When an SED or AES record is required.* Except when the export of items

subject to the EAR is to take place electronically or in an otherwise intangible form, you must file an SED or AES record with the United States Government for items subject to the EAR, including exports by U.S. mail, in the following situations:

(1) For all exports of items subject to the EAR that are destined to Cuba, Iran, Iraq, Libya, North Korea, Serbia (except Kosovo), Sudan, or Syria, regardless of value (see 15 CFR 30.55(h) of the FTSR); and

(2) For all exports of items subject to the EAR that are authorized under a license, regardless of value, or destination;

(3) For all exports of commodities and mass market software subject to the EAR that are authorized under a License Exception or under NLR, when the value of the commodities or mass market software classified under a single Schedule B Number (or Harmonized Tariff Schedule number) is over \$2,500, except as exempted by the Foreign Trade Statistics Regulations (FTSR) in 15 CFR part 30 and referenced in paragraph (c) of this section;

(4) For all exports of items subject to the EAR that will be transshipped through Canada to a third destination, where the export would require an SED or AES record or license if shipped directly to the final destination from the United States (see 15 CFR 30.58(c) of the FTSR).

NOTE TO PARAGRAPH (b): In addition to the Shipper's Export Declaration for exports, the Bureau of Census Foreign Trade Statistics Regulations provide for a specific Shipper's Export Declaration for In-Transit Goods (Form 7513). See 15 CFR 30.3 and 30.8 of the FTSR.

(c) *Exemptions.* A complete list of exemptions from the SED or AES filing requirement is set forth in the FTSR. Some of these FTSR exemptions have elements in common with certain EAR License Exceptions. An FTSR exemption may be narrower than a License Exception. The following references are provided in order to direct you to the FTSR exemptions that relate to EAR License Exceptions:

(1) License Exception Baggage (BAG), as set forth in § 740.14 of the EAR. See 15 CFR 30.56 of the FTSR;